

INTERAGENCY AGREEMENT

BETWEEN

WASHINGTON STATE PATROL

AND

PORT OF SEATTLE POLICE DEPARTMENT

COPY

**THIS AGREEMENT**, pursuant to Chapter 39.34 RCW, is made and entered into by and between the Washington State Patrol, ATTN: Commercial Vehicle Division, PO Box 42614, Olympia WA 98504-2614, hereinafter referred to as WSP; and the Port of Seattle Police Department, PO Box 68727, Seattle, WA 98168, hereinafter referred to as POSPD.

The purpose of this Agreement is to maximize the effective utilization of commercial motor vehicle, driver and cargo inspection resources; to avoid duplication of effort and to expand the number of inspections performed; to advance uniformity of inspections; to minimize delays in schedules incurred by the commercial motor vehicle industry inherent to these types of enforcement activities; and to provide POSPD a means to use the Federal Motor Carrier Safety Administration's (FMCSA) ASPEN software to upload Information System (MCMIS) via WSP's SAFETYNET.

**1. Statement of Work.** Both parties shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Exhibit A, Statement of Work, which is attached hereto and incorporated herein.

POSPD shall use ASPEN to report commercial vehicle inspection data. For use of ASPEN both parties shall act in accordance with Exhibit B, ASPEN Responsibilities.

**2. Duration of Agreement.** Subject to provisions of this Agreement, the period of performance of this Agreement shall start on the date of the final signature of this Agreement and shall continue for a period of five (5) years unless terminated earlier consistent with the provisions provided herein.

**3. Command and Control of WSP Staff.** WSP staff who provide services under the terms of this Agreement shall be under the direct command and control of the Chief of WSP or designee and shall perform the duties required by this Agreement in a manner consistent with WSP policy and regulations, applicable state and local laws, and the Constitutions of the State of Washington and the United States. The assignment of personnel to accomplish the purpose of the Agreement shall be at the sole discretion of the Chief of WSP or designee.

4. **Compliance with Civil Rights Laws.** Both parties shall comply with all federal and state nondiscrimination laws as applicable to the terms of this Agreement.
5. **Records Maintenance.** Both parties to this Agreement shall each maintain books, records, documents, and other evidence which sufficiently and properly reflects all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law and requesters as allowed under the Washington State Public Records Act. Both parties shall retain all books, records, documents, and other material relevant to this Agreement for six (6) years after expiration of the Agreement, and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this retention period. If a Public Disclosure request is made, each party agrees to provide Third party Notification to the other party to offer notice and opportunity to review the request and responsive records prior to disclosure. The other party has ten (10) days after receiving notice to initiate an action to enjoin disclosure of the records pursuant to RCW 42.56.540.
6. **Agreement Alterations and Amendments.** This Agreement may be amended by mutual consent reduced in writing by both parties. Such amendments shall not be binding until they are in writing and signed by personnel authorized to bind each of the parties.
7. **Agency Representatives.** The following persons or their successors represent the parties in matters involving this Agreement:

For WSP:

Captain Darrin Grondel  
Commercial Vehicle Division  
PO Box 42614  
Olympia WA 98504-2614

For POSPD:

Commander John Eliadis  
Port of Seattle Police Department  
PO Box 68727  
Seattle WA 98168

8. **Hold Harmless.** Each party will be responsible for its own acts and the results thereof and shall not be responsible for the act of the other party and the results thereof. Each party therefore agrees that it will assume all risk and liability to itself, its agents or employees, for any loss, cost, damage, or expense resulting at any time from any and all causes due to any act or acts of negligence or intentional act or acts or omissions by itself, its own agents or employees while conducting activities under and pursuant to this Agreement. Thus, each party shall defend, protect and hold harmless the other party from and against all claims, suits, and/or actions arising from a negligent or intentional act or omission of that

party's employees or agents while performing services covered by this Agreement. If there is a dispute as to which party is liable, then a court of competent jurisdiction shall apportion the percentage of liability to be applied to each responsible party. This section shall survive the termination of this Agreement.

9. **Termination.** Except as otherwise provided in this Agreement, either party may terminate its participation in this Agreement upon thirty (30) days' written notification to the other party. If a party's participation in this Agreement is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Agreement for performance prior to the effective date of termination.
10. **Disputes.** In the event that a dispute arises under this Agreement, it shall be determined in the following manner: The Chief of WSP shall appoint one member to the Dispute Board. POSPD shall appoint one member to the Dispute Board. The Chief of WSP and POSPD shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the dispute and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.
11. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, negotiations, representations or agreements, either verbal or written, between the parties hereto concerning the subject matter of this Agreement.
12. **Severability:** Each and every provision of this Agreement shall be deemed to be severable. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provision were not part of this Agreement.
13. **Governing Law:** This Agreement shall be interpreted in accordance with the laws of the State of Washington.
14. **Venue:** The venue for any and all causes of action arising out of this Agreement shall be King County, Washington.
15. **Order of Precedence.** In the event of any inconsistency in the terms of this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by the giving precedence in the following order:
  - Applicable federal and state statutes and regulations;

- Special Terms and Conditions contained in the Statement of Work
- General Terms and Conditions contained in this Agreement
- Any other provision of the Agreement, whether incorporated by reference or otherwise

IN WITNESS WHEREOF, the parties have executed this Agreement.

For Washington State Patrol:

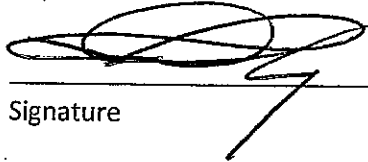
For Port of Seattle Police Department:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

  
  
3/9/12

APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL 8/2/2011

## Exhibit A

## STATEMENT OF WORK

1. **WSP Responsibilities.** WSP shall inspect commercial vehicles operating over public highways and at carrier terminal facilities. WSP also agrees to:
  - a. Function as the lead agency for purposes of administering participation in the Surface Transportation Assistance Act (Act) and to ensure Washington State's compliance, including participating political subdivision, with the terms and conditions of the act.
  - b. Train, retrain (as necessary or desired), test and certify POSPD commercial vehicle inspections pursuant to agreement between WSP and the Commercial Vehicle Safety Alliance (CVSA).
  - c. Supply to POSPD vehicle and driver out-of-service stickers, CVSA decals and inspection forms for all inspections conducted under this Agreement.
  - d. Provide monitoring service relative to POSPD inspection techniques and violations recorded; and provide any data entry for all eligible inspections conducted by POSPD.
2. **POSPD Responsibilities.** POSPD certifies that it has the authority to enforce FMCSA and hazardous materials regulations. POSPD shall, as a routine practice, confine inspection activities to vehicles operating over public highways; and shall participate in consolidated efforts during special roadside inspection activities and training programs. POSPD also agrees to:
  - a. Adopt the North American Uniform Inspections Procedure and SVSA Out-Of-Service Criteria as adopted by WSP.
  - b. Honor CVSA inspection decals affixed to commercial vehicles by authorized agencies.
  - c. Affix CVSA decals to commercial vehicles that pass Level 1 CVSA inspections with no violations. The term "pass inspection" as used in this section shall be interpreted to mean that no violation of any inspection items contained in Appendix A, Part II of the CVSA Out-Of-Service Criteria is disclosed during the inspection process.
  - d. Require commercial vehicle operators to correct all defects disclosed during inspections.
  - e. Adopt recommended out-of-service and other defect repair verification procedures as developed by CVSA.
  - f. Conduct inspections with CVSA certified inspectors only; document commercial vehicle inspections on forms provided by WSP; and forward completed inspection forms to WSP within 5 days following the date of the respective inspection for processing and final compliance.
  - g. Have POSPD officers, who will perform commercial vehicle inspections, attend CVSA Part A and B training, Size, Weight, and Load Training and complete the required number of initial

inspections under the guidance of a CVSA certified inspector within six (6) months of completing Part A and B classroom instruction. Said POSPD Officers shall adhere to CVSA requirements for maintaining certification, adhere to all CVSA policies for conducting inspections, including following the Out-Of-Service Criteria, and follow WSP enforcement guidelines when conducting CVSA inspections.

h. Require all POSPD inspectors to perform the required number of commercial vehicles inspections per year in order to maintain certification. If the required number of inspections are not met, then WSP reserves the right to remove all related software.

i. Require all POSPD inspectors to attend refresher training provided by WSP in order to maintain certification.

j. Provide to the WSP Program Manager named under Agreement Management quarterly program evaluations within 15 days at the end of each fiscal quarter.

k. **Be solely responsible** for any cost incurred by POSPD relating to conformance with this Agreement, including training, retraining, testing and certifying inspectors.

## Exhibit B

## ASPEN Responsibilities

1. **Introduction.** ASPEN was developed to facilitate electronic roadside safety inspections of commercial vehicles and drivers. It provides users with current information about the carrier, and inspection recommendation based on the carrier's safety and accident history, and computer assisted data entry procedures for conducting inspections. The Safety and Fitness Electronic Records System (SAFER) provides information to keep ASPEN users current by identifying changes to carrier information from MCMIS; it also provides a mechanism to electronically transfer inspections reports from roadside ASPEN units to SAFER for input into WSP's SAFETYNET and MCMIS.

2. **Scope of Work.** The parties to this Agreement agree to the following:

a. POSPD Responsibilities.

1) **Administration.** POSPD shall designate a computer (IT) specialist to administer POSPD's use of ASPEN, SAFER and related software and equipment. The IT specialist shall obtain a User Authentication System (UAS) account from WSP for purposes of downloading POSPD's own ASPEN/Inspection Selection System (ISS) updates. POSPD shall maintain software and hardware to keep it compatible with ASPEN and SAFER; resolve software and hardware problems that its officers may encounter with the program; set up software to make it agency-specific; update computers with new versions of the software as it is released; and update computers with new editions of the ISS and any other add-on programs required by SAFER or ASPEN in accordance with timelines, if any, provided by FMCSA or the WSP. POSPD shall also resolve download and data entry problems after POSPD officers submit their inspections to SAFER; and safeguard POSPD ASPEN manager's password to assure data integrity.

2) **Training.** POSPD's ASPEN computer (IT) specialist and all POSPD officers using ASPEN shall attend at least two hours of ASPEN-related training conducted by WSP. POSPD shall be responsible for providing any necessary training subsequent to this initial training provided by WSP. POSPD will coordinate with WSP's Commercial Vehicle Division's (CVD) Computer Support group supervisor to arrange the time and location for the Administrator and End-User training.

3) **Data Transfer.** POSPD officers using the ASPEN shall upload inspection reports to SAFER on a daily basis. If POSPD experiences delays with the transfer due to equipment failure/phone line failure, POSPD will inform the WSP's Commercial Vehicle Division Computer Support Supervisor.

b. WSP Responsibilities.

1) **Administration.** The WSP will provide at least one Commercial Vehicle Enforcement Officer (CVEO) to provide in-the-field training to select POSPD personnel. The WSP's

CVD computer support group will be responsible for providing POSPD with an ASPEN user's identification number. WSP's Commercial Vehicle Division Computer Support Supervisor will work with POSPD's technical representative to arrange a date for initial installation and training of the ASPEN and ISS applications.

2) Software Distribution. WSP shall provide to POSPD one initial installation copy each of the current versions of ASPEN and ISS software. POSPD shall be responsible for obtaining newer versions of this software as they become available. Software is available on the FMCSA website; if any critical software is unavailable on the website, upon request, WSP shall provide that data to the designated IT specialist to update POSPD's ASPEN Programs.

3) Training. WSP shall conduct one initial ASPEN/ISS training class for POSPD ASPEN computer specialist and up to Four POSPD offices. All subsequent training will be the responsibility of POSPD.

3. **ASPEN Equipment.**

a. Equipment Reimbursement. POSPD is responsible for providing the computer equipment necessary for POSPD to perform CMV inspections. Subject to available funding and solely at WSP's option, POSPD may receive reimbursement from WSP to provide initial computer equipment for each CVSA certified POSPD officer to aid in the purchase of the necessary computer equipment. POSPD is responsible for all computer equipment they use under this Agreement; and to ensure that the ASPEN and ISS applications coexist effectively with other possible application on their computer, **when technically feasible**.

b. Title and Use of Equipment. Upon successful completion of the terms of this Agreement, all equipment purchased by POSPD with Agreement funds will be owned by POSPD. POSPD shall be responsible for any all operations, maintenance, replacement, and for the safe operation of such equipment, including all questions of liability **associated with said ownership**.

c. Equipment Management. If WSP reimburses POSPD for the purchase of equipment associated with this Agreement, POSPD shall manage that equipment according to the following:

1) Equipment Records. POSPD shall maintain equipment records that include a description of the equipment; the manufacturer's serial number, model number, or other identification number; the Catalog of Federal Domestic Assistance (CFDA) number 20.218 or other CDFA number provided by WSP; who holds title; the acquisition date; the cost of the equipment and the percentage of federal participation in the cost; the location, use and condition of the equipment at the date the information was reported; and disposition data including the date of disposal and sale price of the equipment. Equipment records shall be retained by POSPD for a period of six (6) years from the date of the disposition, replacement or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by POSPD until all litigations, claims, or audit finding involving the records have been resolved.

2) Inventories. POSPD shall take a physical inventory of the equipment and reconcile the results with the property records at least once every two years. Any differences between



quantities determined by the physical inspection and those shown in the records shall be investigated by POSPD to determine the cause of the difference. POSPD shall, in connections with the inventory, verify the existence, current utilization, and continued need for the equipment. POSPD shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage or theft shall be investigated and a report generated. POSPD will develop adequate maintenance procedures to keep the property in good condition.

3) Disposition of Equipment. If POSPD is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return. When the original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal agency, items of equipment with a current per-unit fair market value of less than \$5000 may be retained, sold or otherwise disposed by POSPD with no further obligation to WSP or the awarding agency.

